

Amendment No. 1 to SB1864

Johnson
Signature of Sponsor

AMEND Senate Bill No. 1864

House Bill No. 1570*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 45-6-213(b), is amended by deleting the subsection in its entirety and substituting instead the following:

(b) To obtain possession of purchased or pledged goods held by a pawnbroker which a claimant claims to be misappropriated or stolen, the claimant shall notify the pawnbroker by certified mail, return receipt requested, or in person evidenced by signed receipt, of the claimant's claim to the purchased or pledged goods, The notice shall contain a complete and accurate description of the purchased or pledged goods and shall be accompanied by a legible copy of the applicable law enforcement agency's report on the misappropriation or theft of such property. If the claimant and the pawnbroker do not resolve the matter within ten (10) days after the pawnbroker's receipt of the notice, the claimant may petition the court to order the return of the property, naming the pawnbroker as a defendant, and must serve the pawnbroker with a copy of the petition. The pawnbroker shall hold the property described in the petition until the right to possession is resolved by the parties or by a court of competent jurisdiction, The court shall waive any filing fee for the petition to recover the property, and the sheriff shall waive the service fees.

(c) If, after notice and a hearing, the court finds that the property was misappropriated or stolen and orders the return of the property to the claimant:

(1) The claimant may recover from the pawnbroker the cost of the action, including the claimant's reasonable attorney's fees; and

(2)

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(A) If the conveying customer is convicted of theft, a violation of this section, or dealing in stolen property, the court shall order the conveying customer to repay the pawnbroker the full amount the conveying customer received from the pawnbroker for the property, plus all applicable pawn service charges.

(B) As used in this paragraph, the term "convicted of" includes a plea of nolo contendere to the charges or any agreement in which adjudication is withheld; and

(3) The conveying customer shall be responsible to pay all attorneys fees and taxable costs incurred by the pawnbroker in defending a replevin action or any other civil matter wherein it is found that the conveying customer was in violation of this subdivision.

(d) If the court finds that the claimant failed to comply with the requirements in subsection (b) or otherwise finds against the claimant, the claimant is liable for the defendants' costs, including reasonable attorney's fees.

(e) The sale, pledge, or delivery of tangible personal property to a pawnbroker by any person in this state is considered to be:

(1) An agreement by the person who sells, pledges, or delivers the tangible personal property that the person is subject to the jurisdiction of the court in all civil actions and proceedings arising out of the pledge or sale transaction filed by either a resident or nonresident plaintiff;

(2) An appointment of the Secretary of State by any nonresident of this state as that person's lawful attorney and agent upon whom may be served all

process in suits pertaining to the actions and proceedings arising out of the sale, pledge, or delivery; and

(3) An agreement by any nonresident that any process in any suit so served has the same legal force and validity as if personally served in this state.

(f) When an appropriate law enforcement official has probable cause to believe that property in the possession of a pawnbroker is misappropriated or stolen, the official may place a written hold order on the property. The written hold order shall impose a holding period not to exceed ninety (90) days unless extended by court order. The appropriate law enforcement official may rescind, in writing, any hold order. An appropriate law enforcement official may place only one hold order on property.

(g) Upon the expiration of the holding period, the pawnbroker shall notify, in writing, the appropriate law enforcement official by certified mail, return receipt requested, that the holding period has expired. If, on the tenth day after the written notice has been received by the appropriate law enforcement official, the pawnbroker has not received from a court an extension of the hold order on the property and the property is not the subject of a proceeding under this subsection, title to the property shall vest in and be deemed conveyed by operation of law to the pawnbroker, free of any liability for claims but subject to any restrictions contained in the pawn transaction contract and subject to the provisions of this section.

(h) A hold order must specify:

(1) The name and address of the pawnbroker.

(2) The name, title, and identification number of the representative of the appropriate law enforcement official or the court placing the hold order.

(3) If applicable, the name and address of the appropriate law enforcement official court to which such representative is attached and the number, if any, assigned to the claim regarding the property.

(4) A complete description of the property to be held, including model number and serial number if applicable.

(5) The name of the person reporting the property to be misappropriated unless otherwise prohibited by law.

(6) The mailing address of the pawnbroker where the property is held.

(7) The expiration date of the holding period.

(i) The pawnbroker or the pawnbroker's representative must sign and date a copy of the hold order as evidence of receipt of the hold order and the beginning of the ninety (90) day holding period.

(j)

(1) Except as provided in subdivision (j)(2) of this subsection, a pawnbroker may not release or dispose of property subject to a hold order except pursuant to a court order, a written release from the appropriate law enforcement official, or the expiration of the holding period of the hold order,

(2) While a hold order is in effect, the pawnbroker shall, upon request, release the property subject to the hold order to the custody of the appropriate law enforcement official for use in a criminal investigation. The release of the property to the custody of the appropriate law enforcement official is not considered a waiver or release of the pawnbroker's property rights or interest in the property. Upon completion of the criminal proceeding, the property must be returned to the pawnbroker unless the court orders other disposition. When such other disposition is ordered, the court shall additionally order the conveying customer to pay restitution to the pawnbroker in the amount received by the conveying customer for the property together with reasonable attorney's fees and costs.

SECTION 2. This act shall take effect July 1, 2012, the public welfare requiring it.